

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

IN RE:)	
)	Case No. 19-15177
MARC GIBRICK,)	
)	Chapter 7
Debtor.)	
<hr style="width: 40%; margin-left: 0;"/>)	Hon. Judge David D. Cleary
)	
ROBERT GOLDEN,)	Room 644
)	
Plaintiff,)	
)	
v.)	Adv. Pro. No. 19 AP 926
)	
MARC GIBRICK,)	
)	
Defendant.)	

**PLAINTIFF’S MOTION TO STRIKE
DEFENDANT’S MOTION TO DISMISS**

NOW COMES Plaintiff/Creditor ROBERT GOLDEN (“Golden”), by and through his attorneys, The Law Offices of Brendan R. Appel, LLC, and pursuant to Federal Rule of Bankruptcy Procedure 7012(b) and Federal Rule of Civil Procedure 12(f)(2), moves to strike Defendant/Debtor MARC GIBRICK’s (“Gibrick”) Motion to Dismiss Entire Amended Complaint under Rule 12(b)(6) as follows:

1. On October 16, 2019, the Court granted Golden leave to file an amended complaint by or before November 16, 2019. The Court also ordered that Gibrick “shall file and serve answer otherwise plead by or before 12/16/2019.” (See Order dated October 16, 2019 attached hereto as **Exhibit A.**)

2. On November 15, 2019, Golden filed his Second Amended Adversary Complaint, which has since been corrected in the docket text as “Amended Complaint.”

3. On December 13, 2019, Gibrick filed his Answer and exhibits to the Amended Complaint. (See Answer attached hereto as **Exhibit B.**)

4. On January 2, 2020, Gibrick filed a Motion to Dismiss pursuant to Rule 12(b)(6), which contains no mention of his Answer that was filed previously. (See Motion to Dismiss attached hereto as **Exhibit C.**)

5. Rule 12(b) states, in pertinent part, that

Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

- (1) lack of subject-matter jurisdiction;
- (2) lack of personal jurisdiction;
- (3) improper venue;
- (4) insufficient process;
- (5) insufficient service of process;
- (6) failure to state a claim upon which relief can be granted; and
- (7) failure to join a party under Rule 19.

A motion asserting any of these defenses *must be made before pleading* if a responsive pleading is allowed. F.R.C.P. 12(b) (emphasis added).

6. By choosing to file his Answer containing admissions and denials to the allegations on December 13, 2019, Gibrick waived and/or was barred from filing his Motion to Dismiss pursuant to Rule 12(b)(6).

7. In addition, or in the alternative, Gibrick's Motion to Dismiss includes a statute of limitations defense to Count I that is untimely, especially since it was not set forth in his Answer as an affirmative defense.

8. Gibrick further argues that Counts II and III fail to "list any elements for a cause of action or any fact supporting a cause of action," yet he clearly understood Counts II and III as evidenced by his admissions and denials to those allegations as stated within his Answer.

9. Consequently, Gibrick's Motion to Dismiss should be barred as untimely.

WHEREFORE, Plaintiff-Creditor ROBERT GOLDEN asks this Honorable Court to strike Defendant-Debtor MARC GIBRICK's Motion to Dismiss under Rule 12(b)(6) in its entirety, and for such further relief as this Court deems just and necessary.

Dated: January 6, 2020

Respectfully submitted,

s/Selwyn M. Skevin
The Law Offices of Brendan R. Appel, LLC
Attorney for Plaintiff-Creditor Robert Golden

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